

Federal Communications Commission

DA 01-2627

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 01-31
Table of Allotments,) RM-10035
FM Broadcast Stations.)
(Huntsville, La Porte, Nacogdoches,)
and Willis, Texas, and Lake Charles,)
Louisiana))

**REPORT AND ORDER
(Proceeding Terminated)****Adopted: October 31, 2001****Released: November 9, 2001**

By the Chief, Allocations Branch:

1. In response to a Petition for Rule Making filed by New Wavo Communication Group, Inc. ("New Wavo"), the Commission has before it for consideration the Notice of Proposed Rule Making, 16 FCC Rcd 3967(2001), proposing the substitution of Channel 279C for Channel 279C3 at Willis, Texas, and reallocation of Channel 279C from Willis, Texas, to La Porte, Texas, as a first local service.¹ New Wavo requests modification of the license for Station KVST(FM) to specify operation on Channel 279C at La Porte as the community of license. New Wavo also requests changes at Huntsville and Nacogdoches, Texas, and Lake Charles, Louisiana. New Wavo filed comments in which it reaffirmed its interest in Channel 279C at La Porte. No other comments were received in response to the Notice in this proceeding.

2. The proposed reallocation of Channel 279C from Willis, Texas to La Porte, Texas, was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recond. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community"). In the Change of Community License Order, the Commission expressed its concern with the potential migration of stations from rural areas to urban areas. The Commission relies on criteria established in Faye and Richard Tuck, 3 FCC Rcd 5374 (1988), to determine whether a community should be awarded a first local service preference.² While La

¹ The Report and Order in MM Docket No. 93-66, 10 FCC Rcd 3329 (1993), reallocated Channel 279C from Huntsville, Texas to Willis, Texas, and modified the authorization for Station KVST(FM) accordingly.

Porte is located just inside the Houston Urbanized Area, the proposed 70 dBu contour of Station KVST(FM) will provide a signal to only 17 percent of the Houston Urbanized Area. Although a Tuck showing was not necessary, New Wavo provided sufficient information supporting La Porte's independence from the Houston Urbanized Area as an independent community justifying a first local service preference.

3. As explained in the Notice, New Wavo requested the substitution of Channel 279C for Channel 279C3 at Willis and reallocation of Channel 279C to the community of La Porte as a first local service under priority (3) of the allotment priorities.³ New Wavo acknowledged that Station KVST(FM) is the only operating service in Willis. In support of the removal of Station KVST(FM) and to ensure continued service at Willis, New Wavo proposed to reallocate co-owned Station KUST (on Channel 259A in lieu of Channel 259C3) from Huntsville, Texas to Willis, Texas, and made a commitment to operate Station KUST at Willis. To accommodate the reallocation of Station KVST(FM) from Willis to La Porte and Station KUST from Huntsville to Willis, New Wavo also requested the substitution of Channel 277C2 for Channel 279C1 at Lake Charles, Louisiana, and the substitution of Channel 277C2 for Channel 277C1 at Nacogdoches, Texas.

4. Based upon the information presented in this proceeding, we believe the public interest would be served by substituting Channel 279C for Channel 279C3 at Willis and reallocating Channel 279C from Willis to La Porte, Texas, since it would result in a preferential arrangement of allotments. Reallocation of Channel 279C to La Porte is entitled to consideration as a first local service. Specifically, La Porte is an incorporated city with its own local government, police and fire departments, school system, post office and two zip codes. La Porte has numerous commercial establishments, health facilities and transportation facilities, many of which incorporate La Porte in their names. In addition to the fact that this reallocation will result in the larger community having a first local service, the upgrade and reallocation of Station KVST(FM) from Willis to La Porte will result in a net gain in population of 2,612,021 people in an area of 21,860 square kilometers within the 60 dBu contour. Further, most of the present coverage area will continue to receive at least five aural services while 15,510 people will receive four services and 902 people will be left with three services but no underserved areas will be created citing Anniston, Alabama, et al., MM Docket No. 98-112, 15 FCC Rcd 9971 (2000).

5. The change of community of license for Station KVST(FM) will not result in the removal of sole local aural service for Willis because of the reallocation of Station KUST from Huntsville,

² These factors are: (1) signal population coverage; (2) the size of the suburban community relative to the adjacent city; and (3) the interdependence of the suburban community with the central city.

³ The FM Allotment priorities are: (1) First full-time aural service; (2) Second full-time service; (3) First local service; and (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3).] See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

Texas to Willis, Texas in this proceeding. New Wavo has requested the substitution of Channel 259A for Channel 259C3 and reallocation of co-owned Station KUST from Huntsville to Willis, stating its willingness to file an application for Channel 259A at Willis. Our engineering analysis indicates that Channel 279C can be allotted to La Porte at New Wavo's specified site in compliance with the Commission's spacing requirements provided additional substitutions are made. Our analysis also indicates that Channel 259A can be allotted to Willis in compliance with our Rules.⁴ Although the reallocation of Channel 259A to Willis will not create any underserved areas and city grade service will be provided to the entire community, 606 people in 231 square kilometers will now receive four services, 123 people in 116 square kilometers will receive three services and 58 people in 16 square kilometers will receive two services. To ensure that local service will continue to be provided to Willis, we will condition the grant of an authorization to operate Station KVST(FM) on Channel 279C at La Porte upon activation of service for Station KUST on Channel 259A at Willis. See Llano and Marble Falls, TX, 12 FCC Rcd 809 (1997). The Commission has specifically stated that the public has a legitimate expectation that existing service will continue, and that this expectation is a factor to be weighed independently against the service benefits that may result from reallocating a channel. We have weighed the factors and are granting New Wavo's reallocation request because of the public interest benefits of providing first local service to both Willis and La Porte. However, we are compelled to condition the reallocation of Channel 279C to La Porte on activation of Channel 259A at Willis to insure continued service at Willis.

6. To accommodate the allotment at La Porte, we shall also substitute Channel 277C2 for Channel 279C1 at Lake Charles, Louisiana, and modify the license for Station KBIU accordingly. Channel 277C2 can be allotted to Lake Charles consistent with the Commission's spacing requirements.⁵ The licensee for Station KBIU has consented to the change in channel, class and transmitter site and New Wavo has agreed to reimburse Station KBIU for the reasonable expenses involved with the changes. To accommodate the substitution at Lake Charles, we shall substitute Channel 277C2 for Channel 277C1 at Nacogdoches, Texas, and modify the license for Station KJCS accordingly. A staff analysis confirms that Channel 277C2 can be allotted to Nacogdoches in compliance with the Commission's spacing requirements.⁶ New Wavo has agreed to reimburse the licensee of Station KJCS for the reasonable expenses in changing its class of channel.

⁴ The coordinates for Channel 279C at La Porte are 29-58-19 and 94-31-16. The coordinates for Channel 259A at Willis are 30-32-37 and 95-28-32.

⁵ The coordinates for Channel 277C2 at Lake Charles are 30-12-12 and 93-26-19.

⁶ The coordinates for Channel 277C2 at Nacogdoches are 31-25-59 and 94-49-03. Station KJCS has an application on file for Channel 277C2 (BPH-20010612AEI and File No. 20000728ABK). Radio Licensing, Inc. also has a petition for reconsideration pending in MM Docket No. 99-257, 14 FCC Rcd 18890 (1999) which involves the allotment of Channel 278A at Centerville, Texas.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective December 24, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

Community	Channel Number
Lake Charles, Louisiana	241C, 258C1, 277C2, 287C2
Huntsville, Texas	269A
Nacogdoches, Texas	221A, 277C2
Willis, Texas	259A
La Porte, Texas	279C

8. IT IS FURTHER ORDERED, That the Secretary of the commission shall send by Certified Mail, Return Receipt Requested, a copy of the Order to the following:

Cumulus Licensing, Inc.
Station KBIU
111 East Kilbourn Avenue
Milwaukee, Wisconsin 53202

Radio Licensing, Inc.
Station KJCS
910 North Street
Nacogdoches, Texas 75961

9. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of New Wavo Communication Group for Station KVST(FM), Channel 279C3, Willis, Texas, IS MODIFIED to specify operation on Channel 279C at La Porte, Texas, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.

(b) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

(c) Operation of Station KVST(FM) on Channel 279C in LA Porte, Texas, including program test operation pursuant to Section 73.1620, will not be commenced until a construction permit has been issued for Channel 259A at Willis, Texas, and activation of service has been initiated for Station KUST on Channel 259A at Willis.

10. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of New Wavo Communication Group, Inc. for Station KUST, Channel 259C3, Huntsville, Texas, IS MODIFIED to specify operation on Channel 259A at Willis, Texas, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Cumulus Licensing, Inc., for Station KBIU, Channel 279C1, Lake Charles, Louisiana, IS MODIFIED to specify operation on Channel 277C2 in lieu of Channel 279C1 at Lake Charles, Louisiana, subject to the following conditions:

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

12. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the communications Act of 1934, as amended, the license of Radio Licensing, Inc. for Station KJCS, Nacogdoches, Texas, IS MODIFIED to specify operation on Channel 277C2 in lieu of Channel 277C1, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in License BLH-19841023DZ except for the channel as specified above. Any changes, except for those specified, require prior authorization pursuant to an application for construction permit (Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, provided the transmission facilities comply in all respects with License BLH-19841023DZ, except for the channel as specified above, and license application (Form 302) is filed within 10 days of commencement of program tests.

13. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, New Wavo Communication Group, Inc., licensee of Station KVST(FM), is required to submit a rule making fee in addition to the fee required for the application to effect the change in community of license from Willis to La Porte, Texas, and the substitution of Channel 279C for Channel 279C3.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. Questions relating to the application filing process should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**